

TOWNSHIP OF MIDDLE  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY

RESOLUTION  
\_\_\_-20

Date: June\_\_\_, 2020

Subject: A RESOLUTION CREATING A TEMPORARY EMERGENCY RECOVERY PLAN FOR RESTAURANTS AND RETAIL BUSINESSES --“TERP”-- WITHIN THE TOWNSHIP OF MIDDLE, CAPE MAY COUNTY, NEW JERSEY

WHEREAS, Pursuant to Executive Order 107 (“EO 107) issued by Governor Murphy on March 21, 2020 and which remains in effect until further notice, all businesses which were deemed non-essential were ordered closed until further notice and all restaurants, bars, and food service establishments have been ordered to close except for take-out food orders to be consumed off-premises; and

WHEREAS EO 142, issued by Governor Murphy on May 13, 2020, provided, in part, that “non-essential retail businesses are permitted to reopen to the public, but only where they adopt [certain policies]”, which prohibit customers from entering the store premises and restrict such retail businesses to “curbside pickup” only effective as of 6:00 am on Monday, May 18, 2020; and

WHEREAS, in an effort to aid and assist such retail businesses in the Township of Middle during this COVID-19 Pandemic, and to assist both merchants and customers, and consistent with the spirit of EO 142, the Township intends to permit certain outdoor displays and sales of merchandise, at the option of the merchant, and subject to the terms and conditions specified in this Plan; and

WHEREAS, in anticipation of some modification or relaxation of EO 107 and other applicable Gubernatorial Executive Orders pertaining to the COVID-19 Pandemic, pertaining to restaurants and other food service establishments which currently are restricted to providing only take-out orders or home delivery, the Township intends to permit limited outdoor dining subject to the terms and conditions specified in this Plan which shall be liberally interpreted to facilitate such purpose; and

WHEREAS, the permissions granted by the Township pursuant to this Temporary Emergency Recovery Plan (“Recovery Plan” or “TERP”) shall be for a limited duration and subject to the terms, conditions, and other provisions which are specified herein;

NOW THEREFORE, BE IT RESOLVED by the Township Committee, the governing body of the Township of Middle, as follows:

1. The averments above are incorporated herein as if set forth at length.

## RETAIL SALES OF GOODS & MERCHANDISE

2. Any merchants or retail stores located in the B, RB, TB, TC, HV & VC Zoning Districts, which includes all businesses as well as any business in any other location, which is engaged in the sale of goods and merchandise, and whether or not the operation is conforming or non-conforming under the Township's current zoning, and without regard as to whether such business has been determined as essential or non-essential pursuant to EO 107 as amended and supplemented, shall be permitted to display merchandise outdoors in an area immediately adjacent to the brick-and-mortar premises and to conduct the sale of such merchandise. To the extent that such business does not have private property available to use for such purpose, then a portion of the Township right-of-way ("ROW") may be used for such purpose. In order to engage in such outdoor display of merchandise and the same thereof, the merchant must comply with the following:

- a. A permit must be obtained from the Township Zoning Officer following the filing of an application on forms provided by the Township that contains all of the information specified on such application form as well as such other information as specified elsewhere in this Recovery Plan or that may be required by the Township.
- b. To the greatest extent possible, and in compliance with Governor Murphy's EO 142 issued May 13, 2020, ("EO 142") all sales, including payments, should be arranged beforehand and the item(s) purchased should be delivered by the merchant to the customer at curbside. All contact between the merchant and the customer MUST be minimal.
- c. The merchant shall be responsible for enforcing the social distancing requirements specified in EO 142 (May 13, 2020.)
- d. The merchant, employee, and customer must wear an appropriate face mask and gloves, if feasible.
- e. The merchant must enforce social distancing requirements at all times. The merchant shall have hand sanitizer on hand for the use of the merchant, employee, and customer. The merchant must provide employees with ample opportunity for hand washing at reasonable periodic intervals and follow the other requirements imposed by EO 142.
- f. If a customer wishes to purchase an item which is not on outside display, the merchant may enter the store to get the item, but the customer may not, under any circumstances, enter the store. The item shall be delivered to the customer at curbside. Upon completion of any purchase, the customer must depart the area.

This Recovery Plan for retail stores and merchants shall become effective and shall remain in effect for such time as specified elsewhere herein.

## RESTAURANTS AND OTHER FOOD SERVICE ESTABLISHMENTS

3. All restaurants and food service establishments (hereafter collectively referred to as “Restaurants”) shall be permitted to engage in outdoor dining to commence upon relaxation or modification of existing Gubernatorial Executive Orders which prohibit all but take-out service and home delivery, and shall continue for such time as specified elsewhere in this Recovery Plan.

All food service establishments shall be required to implement and abide by whatever social distance requirements are in effect at the time – both for interior and outdoor dining.

4. Any restaurant seeking to engage in outdoor dining shall apply to the Zoning Officer for a permit to do so pursuant to Section 250-630 (Sidewalk Café) of the Middle Township Code. Such application shall meet the requirements as specified elsewhere in this Recovery Plan. In addition to such general requirements, the application, insofar as it pertains to restaurants, shall include a drawing, approximately to scale, showing the layout of proposed tables, chairs and low barriers, showing dimensions of tables, chairs and overall area as related to building façade, sidewalk, existing poles, paper boxes, trees or other sidewalk installations plus detailed narrative and plan of relevant information describing method of service, proposed hours of service outdoors and method of litter control and trash handling of outdoor service.

4a. In this regard a restaurant may utilize its own existing parking area, with the exceptions of handicapped spaces, which may not be utilized for seating.

5. Any restaurant seeking to use any portion of the Township right-of-way shall execute such forms as required by the Township Solicitor which shall include, at a minimum, the following:

- a. an indemnification and hold harmless agreement in favor of the Township;
- b. a general liability policy, with limits of coverage as described herein and which shall name the Township of Middle as an additional insured;
- c. an acknowledgement that
  - i. the restaurant may not exceed its existing maximum seating capacity when utilizing outdoor dining;
  - ii. this is an Emergency Temporary Plan enacted solely because of the COVID-19 Pandemic and that any right conferred to a restaurant operator under this Plan shall terminate on October 31, 2020 unless further extended by the Township in its sole judgment and discretion;
  - iii. the restaurant operator does not acquire any vested rights or privileges under this Plan and waives any right to continue the permissions granted by this plan beyond October 31, 2020 (or such extended date as may be established by the Township);
- d. such further and additional documents as may be required by the Atlantic County Municipal Joint Insurance Fund (“ACMJIF”) of which the Township is a member.

6. This Plan shall be approved by Resolution which shall be effective upon issuance and shall extend until October 31, 2020 provided, however, that any extension of the area designated for the sale and consumption of alcoholic beverages beyond what is currently licensed, that is, the “Licensed Premises” is reserved to the Township Committee, the local issuing authority for all matters pertaining to Alcoholic Beverage Licenses including the licensing, renewal and local enforcement of Title 33 of the Statutes of New Jersey and the Rules and Regulations of the Division of Alcoholic Beverage Control in the State Department of Law and Public Safety. THIS PLAN MAY BE MODIFIED OR AMENDED AS CIRCUMSTANCES MAY REQUIRE.

7. As used throughout this Resolution, the term “BYOB” shall mean “bring your own bottle” and shall be limited to wine and beer but shall exclude liquor.

#### CATEGORY ONE

8. Category One shall consist of all restaurants located in TC, TB, HV & VC Zones that have received previous outdoor dining approval.

9. Those restaurants that have previously received approval for outdoor dining using only their deeded property may seek permission to expand outdoor dining to include a portion of the Township right-of-way by following the procedures outlined in Middle Township Code Section 250-630 (Sidewalk Café). (Appendix “A” attached), subject to all applicable Executive Orders and the conditions herein.

10. Those restaurants that have previously been approved for outdoor dining by way of Site Plan Approval granted by the Middle Township Planning / Zoning Board (“APZB”) and the terms of which approval conflict with this Temporary Recovery Plan, the provisions of this Temporary Recovery Plan shall control and supersede such Site Plan Approval but only for the duration of this Plan. On October 31, 2020, this emergency Temporary Plan shall terminate, and the provisions of the Site Plan Approval shall continue in force and effect.

11. Those restaurants in Category One that are licensed for the sale and consumption of alcoholic beverages, may serve alcoholic beverage outdoors but only in the deeded portion of the property and provided that such outdoor area is currently encompassed within the area designated as part of the “licensed premises” or has been licensed under the new ABC expansion of premises permit. Those restaurants may also use an approved part or portion of the Township ROW but only to serve food which patrons may consume in that area.

**NO ALCOHOLIC BEVERAGES SHALL BE SERVED OR CONSUMED IN THE AREA OF THE TOWNSHIP SIDEWALK OR RIGHT OF WAY. PATRONS DINING IN THE RIGHT-OF-WAY ARE PROHIBITED FROM BYOB PRIVILEGES.**

#### CATEGORY TWO

12. Category Two shall consist of all restaurants located in the TC, TB, HV & VC Zoning Districts that have NOT received previous outdoor dining approval.

13. These restaurants may apply for outdoor dining to be conducted only on the deeded portion of their respective properties. The application shall comply with the provision of Middle Township Code Section 250-630 (Sidewalk Café). (Appendix “A” attached), subject to all applicable Executive Orders and the conditions herein.

Outdoor sale and consumption of alcoholic beverages shall be permitted to the same extent as allowed for Category One properties and subject to the same conditions.

14. The Zoning Office shall determine if the restaurants are such that there can be no use of the Township right-of-way without substantial risk of injury to patrons and members of the public and substantially interfering with vehicular travel. In such event, any use of the Township right-of-way for outdoor dining is prohibited.

15. For restaurant(s) located in the TC, TB, HV & VC Zones Zoning District that already have an outdoor deck where dining is permitted, no additional outdoor dining area shall be allowed, and the existing outdoor dining area shall only be utilized when permitted by Gubernatorial Executive Order and subject to compliance with any social distancing requirements imposed. Patrons may BYOB.

### CATEGORY THREE

16. Any restaurant located in any other zoning district, that is other than in the TC, TB, HV & VC Zones, including all those which are non-conforming uses in the zone wherein they are situated, may apply for outdoor dining in the same manner and to the same extent as restaurants located in Category One. Any such application shall be subject to the General Provisions of this Emergency Temporary Plan.

### PROVISIONS APPLICABLE TO RESTAURANTS IN ALL CATEGORIES

17. The provisions of sections 3 through 16 are intended solely for the purpose of assisting all restaurants in the Township (the great majority of which only operate seasonally) in serving the maximum number of patrons possible at any one time. This is in recognition of the fact that social distancing requirements and other regulations will operate to limit the number of restaurant patrons to a number that will, very likely, fall below the maximum number of patrons that could normally be seated for on-premises dining. By increasing the area for dining to the outdoors, the goal is to provide all restaurants with the capability of serving a greater number of patrons while observing social distancing and other requirements.

### PERMIT APPLICATION REQUIREMENTS

18. Every application for a temporary permit under this Recovery Plan for either outdoor sales of merchandise or outside dining shall be completed on forms provided by the Township for that purpose. No fee shall be charged for such permit. Restaurants that have previously been approved for outdoor dining must apply under this Recovery Plan.

19. Such application shall contain all of the information and documents required. Incomplete applications cannot be processed.

20. Each retail merchant and restaurant shall, if issued a temporary outdoor permit, be allowed to use a portion of the Township ROW subject to such restrictions and conditions contained in the temporary permit.

21. Each applicant for a temporary outdoor permit that using any part of the Township ROW shall provide the Township with a certificate of insurance naming the Township of Middle etc. as an additional insured with liability limits specified herein. Such applicant shall also execute an Indemnification and Hold Harmless Agreement to indemnify and hold the Township harmless from any claim filed by any individual claiming injury or other damages arising out of the use of the Township ROW. The form of Indemnification and Hold Harmless shall conform to the requirements of the Atlantic County Municipal Joint Insurance Fund (ACMJIF) of which the Township is a member.

#### LIABILITY INSURANCE REQUIREMENTS AND SCHEDULE OF INSURANCE

22. Notwithstanding the indemnification, hold harmless and defense obligations of the USER/APPLICANT, the USER/APPLICANT shall provide, at its own cost and expense, proof of the following insurance to the “TOWNSHIP OF MIDDLE”:

General Liability including Products & Completed Operations Insurance with a minimum combined single limit of liability per occurrence for bodily injury and property damage of one million (\$1,000,000) dollars with a minimum annual aggregate of two million (\$2,000,000) dollars.

Liquor Liability with a minimum limit of liability per occurrence of one million (\$1,000,000.00) dollars with a minimum annual aggregate of two million 250 (\$2,000,000.00) dollars (if applicable).

The TOWNSHIP OF MIDDLE shall be named as an “Additional Insured” and shall be provided with an endorsement to the policy evidencing the designation.

Failure by the USER/APPLICANT to supply such written evidence of the required insurance coverage, and/or the failure by the USER/APPLICANT to maintain the coverage for the duration of this Agreement shall result in the USER’s/APPLICANT’s default of this Agreement and the USER/APPLICANT shall be prohibited from using said ROW.

The insurance companies providing the above referenced coverage must be licensed by the State of New Jersey and acceptable to the TOWNSHIP. The USER shall take no action to cancel or materially change any of the insurance required under this Agreement without the TOWNSHIP’s prior approval. The maintenance of insurance under this section shall not relieve the USER of any liability greater than the limits or scope of the applicable insurance coverage.

23. EFFECTIVE DATE. This Temporary Recovery Plan shall become effective as follows:

Retail stores: Effective Monday, June 1, 2020 through midnight on October 31, 2020. This Plan may be terminated sooner upon the Governor permitting all retail establishments to resume normal operations and without restrictions.

Restaurants and Food Service Establishments: Effective upon relaxation of Gubernatorial Orders which currently require restaurants to remain closed and, when effective, to remain in effect through midnight on October 31, 2020.

24. VIOLATIONS Any violation of the temporary permit authorized by this Recovery Plan, or any violations of this resolution upon which it is authorized or of any Gubernatorial Executive Order shall be grounds for the suspension or revocation of the Township's Temporary Permit by the Zoning Officer. The continued violation shall be cause for prosecution under the Township's ordinances.

25. The Municipal Clerk/Administrator, Construction Official, Zoning Officer and all other appropriate personnel, agent, servants and employees of the Township of Middle are hereby empowered and authorized to take such action as may be necessary to implement to the provisions of this resolution;

I, Kimberly D. Krauss, Township Clerk of the Township of Middle, Cape May County, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Township Committee at a meeting of said Middle Township Committee, held on the \_\_\_\_ day of \_\_\_\_\_, 2020 and said Resolution was adopted by not less than a two-thirds vote of the members of the Township Committee.

Witness my hand and seal of  
the Township of Middle, this  
day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Kimberly D. Krauss, Township Clerk / Administrator

Date:

\_\_\_\_\_  
Timothy Donohue, Mayor

ATTEST: \_\_\_\_\_  
Kim Krauss,  
Township Clerk  
Date: \_\_\_\_\_

## APPENDIX A

Section 250-630 of the Middle Township Code pertaining to Sidewalk Café.

a. Purpose. The purpose of this subsection is to promote the concept of outdoor dining which enhances the relaxed atmosphere and truly showcases the beautiful downtown business district by allowing people to enjoy the ambiance of the area and to provide a mechanism to permit food service establishments to license these areas without the time and expense of formal site plan review. Also, the goal is to optimize the growth and income of food service establishments by allowing and encouraging the use of portions of the public right-of-way between the curb and the adjacent property line for outdoor dining. Privileges permitted under this subsection are specifically limited to sidewalks and private business property and do not extend to the boardwalk. It is the intention of the Township of Middle to monitor and review the use of these facilities after the adoption of this subsection to determine its full impact upon the Township and the enjoyment of its citizens.

b. No Grant of Property Right. The Township of Middle reserves its right to amend, terminate or repeal this subsection and accordingly no property rights are granted to any persons(s) or entities by virtue of this subsection. All person or entities are hereby given express notice that any expenditures of funds in reliance on the provisions of this subsection are at their sole risk of loss in the event this subsection is amended, terminated or repealed.

c. Applicability. This subsection applies to all Middle Township food service establishments in any Zoning District. This subsection is not applicable to any food service establishment having been previously granted site plan approval for outdoor dining. Such food service establishments may continue to operate without the necessity of additional permitting under this subsection.

d. Permitted Installations. Permitted installations are as follows:

1. Within the deeded property line: Outdoor tables and chairs, totally within the deeded property of the food service establishment and service thereon to patrons, provided:

(a) The design of the tables and chairs is esthetically pleasing to the surrounding architecture. No additional advertising or signage is permitted upon the tables, umbrellas or canopies.

(b) The layout of tables and chairs does not in any way interfere with pedestrian or vehicular safety or with necessary access for firefighting equipment or ambulances or personnel.

(c) One (1) table, including chairs, per ten (10) linear feet of footage will be allowed; therefore, a restaurant with fifty (50) feet of linear footage can have five (5) tables.

(d) The layout shall not cause irreparable damage to existing landscape.

(e) The highest standards of cleanliness of the outdoor area shall be maintained at all times including frequent litter removal within, around, and beyond the subject property. A plan for litter

removal, trash handling and over-all cleanliness and maintenance must be submitted together with the application.

(f) Hours of operation for outdoor dining shall not exceed those of the primary use.

(g) Storage of the tables and chairs using the public right-of-way shall be within the building during nonbusiness hours.

(h) Food service establishments shall not be permitted to play music or have sound amplification in the outdoor dining area. No public address system shall be permitted.

(i) No outdoor lighting shall be permitted except small self-powered table lighting, other than approved signs and light fixtures.

(j) Low barriers of temporary nature may be placed at the edge of seating area during business hours so long as there is no interference with public safety or pedestrian movement patterns. Nothing is to be placed beyond the restaurant food service establishment's property line so as to infringe on the adjacent property owner.

(k) There shall be no outside cooking or food preparation of any kind unless otherwise authorized by the Board.

(l) Food purchased for consumption at an outdoor café may not be sold from a permanent or temporary area, which is located outside. Food service will be 419 provided from inside the eatery.

2. Outdoor tables and chairs on the public sidewalk directly in front of or adjacent to the food service establishment and service thereon to patrons shall be permitted provided:

(a) All above parameters as set forth in paragraph d1(a) through (l) above shall apply.

(b) The table/chair layout, and low barrier if applicable, shall be so arranged that if all seats are occupied, there is no less than six (6) feet unobstructed sidewalk passageway for pedestrians shall be available. The specific intention is that the public shall have a minimum of six (6) feet of free passage at all times and under all conditions on paved areas.

3. Outdoor dining as permitted and licensed under this section shall not increase the required parking spaces for any food service establishment.

4. Food service establishments that provide outdoor dining and are controlled by the New Jersey Alcoholic Beverage Commission shall be further regulated in the outdoor service and consumption of alcoholic beverages by the special conditions imposed by Council on the liquor license of the food establishment.

5. Food service establishments that provide outdoor dining and permit alcoholic beverages but are not licensed by New Jersey Alcoholic Beverage Commission shall comply with N.J.S.A. 2C:33-27, which prohibits:

(a) The consumption of alcoholic beverages, other than wine or a malt alcoholic beverage, in a portion of the premises which is open to the public;

(b) The charging of any admission fee or cover, corkage or service charge or the advertisement inside or outside of such premises that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public; and

(c) The consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal.

e. Approval of Plan by Middle Township Zoning Officer. Any food service establishments for which this subsection is applicable must make application to the Middle Township Zoning Officer annually and receive approval and a permit from this office prior to setting up any outside service tables or chairs. The application shall be on prescribed forms and be filled out completely and submitted with the zoning permit application and include the following information:

1. Scaled layout of proposed tables, chairs and low barriers, showing dimensions of tables, chairs and overall area as related to building façade, sidewalk, existing poles, paper boxes, trees or other sidewalk installations.

2. A detailed narrative and plan of relevant information describing method of service, proposed hours of service outdoors and method of litter control and trash handling of outdoor service.

3. Photographs or diagrams of tables, chairs, umbrellas, etc. should be utilized showing style, design, materials, size and colors.

4. In processing applications the Township Zoning Officer shall confer as necessary with the Police and Fire Departments, Code Enforcement Officer, Zoning and Planning Department, Township Clerk and or Township Engineer and shall use as criteria for decision making the following parameters:

(a) Pedestrian safety;

(b) Vehicular safety;

(c) Public safety;

(d) Acceptability of the management plan for cleanup, litter control and trash handling;

(e) Impact on existing landscaping;

(f) Any potential interference with police or fire safety access.

f. Insurance Requirement. The applicant must have liability insurance in effect at the time of the application. If the restaurant owner is not the property owner then the property owner must likewise have insurance in effect at the time of application by the restaurant owner. If the applicant, and owner if a different person or entity intends to install tables and chairs for outdoor dining on the public sidewalk or within the Township, right-of-way, said party shall execute a hold harmless agreement to both the Township of Middle and the County of Cape May in a form supplied and approved by the Township, and the Township and the County of Cape May must be named as an additional insured on the operator's policy as well as the property owner's policy. The limits of liability required are a minimum of one million (\$1,000,000.00) dollars combined single limit bodily injury and property damage or split limit of one million/one million (\$1,000,000.00/\$1,000,000.00) dollars bodily injury liability and one hundred thousand (\$100,000.00) dollars property damage liability. If a food establishment meets the conditions as defined in 26-7.15d, the food establishment, in addition to the conditions and insurance coverage described above, must provide the Township with proof of liquor liability insurance. The limits of the liquor liability required are a minimum of an amount as provided by the JIF. Said insurance policy, as well as any policy required by the preceding paragraph, shall name the Township as an additional insured and shall provide that said policy cannot be cancelled without at least fifteen (15) days advanced written notice to the Township.

g. Violations and Penalties. In the event of noncompliance, a written warning complaint may be made for the revocation or suspension of the approval and permit to conduct outdoor dining by the Code Enforcement Officer or other official of the Township of Middle. All procedures regarding the revocation or suspension of a permit shall be conducted pursuant to said subsection. Additionally, summonses may be issued for specific violations of other municipal ordinances, including but not limited to health, safety and sanitary code violations with each and every day that the violation continues will be considered a separate offense and punishable pursuant to the relevant section's penalty provisions.

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